

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JUAN BAUTISTA-RUBIO,**

**Defendant.**

**No. 14-CR-52-LRR**

**FINAL JURY INSTRUCTIONS**

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**Ladies and Gentlemen of the Jury:**

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

## **INSTRUCTION NO. 1**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

## **INSTRUCTION NO. 2**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

### **INSTRUCTION NO. 3**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

## **INSTRUCTION NO. 4**

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. The fact that an interpreter was used in this trial is not evidence.
3. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
4. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
5. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
6. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

### **INSTRUCTION NO. 5**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

## **INSTRUCTION NO. 6**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

## **INSTRUCTION NO. 7**

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached.”

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.



## **INSTRUCTION NO. 8**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

## **INSTRUCTION NO. 9**

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

## **INSTRUCTION NO. 10**

A reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

## **INSTRUCTION NO. 11**

The Indictment charges that, on or about April 5, 2012, in the Northern District of Iowa, the defendant, during and in relation to the unlawful use of identification documents, did knowingly transfer, possess and use without lawful authority a means of identification that the defendant knew belonged to another person, including the name, date of birth and Social Security Number, bearing the last four digits 4710, of another actual person.

The defendant has pleaded not guilty to this charge.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged.

There is no burden upon the defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

## INSTRUCTION NO. 12

The crime of aggravated identity theft, as charged in the Indictment, has five elements, which are:

*One*, on or about April 5, 2012, in the Northern District of Iowa, during and in relation to the crime of unlawful use of identification documents;

*Two*, the defendant knowingly used;

*Three*, without lawful authority;

*Four*, the means of identification, that is, the name, date of birth or Social Security Number, bearing the last four digits 4710, of Roel Pena, another actual person; and

*Five*, the defendant knew the means of identification, the name, date of birth or Social Security Number, bearing the last four digits 4710, of Roel Pena, belonged to another actual person.

A defendant acts “without lawful authority” not only when he uses a means of identification without the consent or knowledge of its owner but also when he uses a means of identification with the consent or knowledge of its owner to commit a crime. A means of identification need not be illicitly procured for it to be used “without lawful authority.”

The phrase “during and in relation to” means that the name, date of birth or Social Security Number of Roel Pena was used in furtherance of the crime of unlawful use of identification documents; it must have been used to some purpose or effect with respect to the commission of that crime; the presence or involvement of the name, date of birth or Social Security Number of Roel Pena in the commission of that crime cannot be the result of accident or coincidence. The name, date of birth or Social Security Number must facilitate or have the potential to facilitate the commission of the crime of unlawful use of identification documents.

If the government proves all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged. Otherwise, you must find the defendant not guilty of the crime charged.

### **INSTRUCTION NO. 13**

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if the defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider the evidence of the defendant’s acts and words, along with all of the other evidence, in deciding whether the defendant acted knowingly.

## **INSTRUCTION NO. 14**

**You have heard testimony that the defendant made statements to law enforcement.**

**It is for you to decide:**

***First*, whether the defendant made the statements; and**

***Second*, if so, how much weight you should give to them.**

**In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.**

## **INSTRUCTION NO. 15**

**You will note that the Indictment charges that the offense was committed “on or about” a certain date. The government need not prove with certainty the exact date or the exact time period of the offense charged. It is sufficient if the evidence establishes that the offense occurred within a reasonable time of the date or period of time alleged in the Indictment.**



## **INSTRUCTION NO. 16**

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

## INSTRUCTION NO. 17

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because your verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdict.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Finally*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict might be—that is entirely for you to decide.

## INSTRUCTION NO. 18

Attached to these instructions you will find the Verdict Form. The Verdict Form is simply the written notice of the decision that you reach in this case. The answer to the Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answer to the Verdict Form, your foreperson will fill out the Verdict Form, sign and date it and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form in accord with the evidence and these instructions.

July 9, 2014  
Date

Linda R. Reade  
Linda R. Reade, Chief Judge  
United States District Court  
Northern District of Iowa